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BEFORE THE ARIZONA CORPORATION COMMISSION

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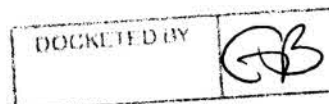
**IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR
VALUE OF THE UTILITY PROPERTY
OF THE COMPANY FOR
RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE
RATE SCHEDULES DESIGNED TO
DEVELOP SUCH RETURN.**

DOCKET NO. E-01345A-16-0036

DOCKET NO. E-01345A-16-0123

Arizona Corporation Commission
DOCKETED

DEC 05 2016



**IN THE MATTER OF FUEL AND
PURCHASED POWER
PROCUREMENT AUDITS FOR
ARIZONA PUBLIC SERVICE
COMPANY.**

**EMERGENCY MOTION TO
COMPEL PRODUCTION OF
BARBARA LOCKWOOD
CALENDAR IN ADVANCE OF
LOCKWOOD DEPOSITION**

Energy Freedom Coalition of America ("EFCA") requests an order compelling Arizona Public Service Company (the "Company") to answer a data request regarding witness Barbara Lockwood's calendar. EFCA requested the calendar to assist in discovery of Ms. Lockwood's relevant prior statements. It expects the calendar to identify meetings and presentations related to topics in her testimony. EFCA wants to use the calendar in deposition to ask about the meetings and presentations, including what she said about the same subjects as her testimony.

1 The calendar is also plainly relevant because APS seeks to recover all or a portion of Ms.
2 Lockwood's salary from ratepayers through this proceeding. Other utility commissions require
3 that an employee's compensation be reasonable and aligned with the interests of ratepayers.¹ Ms.
4 Lockwood's day to day activities are indicative of whether or not her actions align with ratepayer
5 interests. EFCA wishes to discover whether recovering the requested portion of Ms. Lockwood's
6 salary is appropriate and whether her duties align with ratepayer interests.

7 Despite a personal consultation, the Company refuses to share this data. The Company's
8 unwillingness to provide this plainly discoverable information requires the Commission to resolve
9 two simple issues:

10 1) A party may discover any information reasonably calculated to lead to the
11 discovery of admissible evidence. Ms. Lockwood's calendar will help EFCA ask about her
12 prior conversations and presentations on the same subject as her pre-filed testimony. May
13 EFCA discover written evidence of a testifying witness's prior statements on the same
14 subject as her testimony?

15 2) When executives divide their time between ratepayer and utility benefiting activity
16 and shareholder benefiting activity, a utility commission clearly may exclude a
17 corresponding portion of executive compensation from the rate base. May EFCA discover
18 how Barbara Lockwood divides her time between shareholder and ratepayer activity?

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 Barbara Lockwood is a key witness in this rate case. She submitted the broadest and most
21 expansive pre-filed testimony of any Company witness. She is the highest ranking executive the
22 Company will call.

23 EFCA sent the Company a data request for Ms. Lockwood's calendar. The Company
24 objected and refused to respond. Without additional explanation, it contended the calendar was not
25 relevant and not reasonably calculated to lead to the discovery of admissible evidence.²

26
27 ¹ See eg. *In the Matter of the Application of Minnesota Power*, Docket No. E-015/GR-08-415, Findings of Fact,
28 Conclusions of Law, and Order at 44 (May 4, 2009); See also, *In the Matter of the Application of Otter Tail Power
Company for Authority to Increase Rates for Electric Utility Service in Minnesota*, Docket No. E-017/GR-10-239 at
p.49, para 233.

² Ex. 1 APS Objection to Data Request 4.2.

1 The parties personally consulted on this issue and the Company continues to refuse to
2 produce the documentation sought. During personal consultation, EFCA explained the direct
3 relevance of the calendar and its relevance to whether the Company may rate base her
4 compensation. EFCA also explained that it was calculated to lead to additional admissible
5 evidence. EFCA wants to use the calendar in deposition to ask about statements Ms. Lockwood
6 made on the same subjects as her testimony. Ms. Lockwood commonly meets with people and
7 makes presentations on issues directly related to the Company's proposal in this case and her
8 calendar would list all such meetings and presentations.³

9 The Company insists that EFCA obtain an order before it will provide this relevant data.
10 Because the data is relevant to an upcoming deposition, EFCA requests expedited consideration.

11 **I. Ms. Lockwood's prior statements are discoverable.**

12 Prior witness and party statements are clearly relevant pursuant to multiple rules of
13 evidence, which guarantee their admission.

- 14 • Rule 613 allows testimony regarding prior witness statements. It even allows parties to use
15 extrinsic evidence to prove prior statements.
- 16 • Rule 801(d)(1) excludes prior inconsistent statements from the definition of hearsay.
- 17 • Rule 801(d)(2)(D) excludes prior statements of party employees from the definition of
18 hearsay.

19 Ms. Lockwood is a key witness and a high-ranking party executive. Her statements on any topic
20 relevant to her testimony are admissible.

21 The calendar is useful for discovering those statements. For any calendared meeting with
22 a subject line relevant to her testimony, EFCA can ask Ms. Lockwood what she said at that
23 meeting. EFCA can discover whether Ms. Lockwood made consistent or inconsistent statements
24 in these meetings.

25 EFCA can also discover what others said to Ms. Lockwood in those meetings. Much of her
26 testimony is opinion in her employer's favor. EFCA should have a chance to discover what
27

28 ³ EFCA wishes to make clear it does not seek and does not expect to receive calendar entries reflecting personal matters. EFCA expects that such entries would be redacted when the calendar is produced.

1 information influenced Lockwood's opinion testimony. Statements made to her in calendared
2 meetings may have contributed to her opinions. EFCA has a right to ask about those statements.

3 **II. Ms. Lockwood's calendar is relevant because APS rate based a portion of her**
4 **compensation.**

5 As set forth above, other state utility commissions have excluded portions of executive
6 compensation from a utility's recovery when there is a misalignment between the compensation
7 and ratepayer interests. Some utility executives focus on issues benefitting shareholders rather than
8 the utility or its ratepayers. Others split their time between shareholder issues and helping the
9 utility and its ratepayers. When that happens, a utility commission may exclude all or a portion of
10 the executive's compensation from recovery.

11 The Company does not dispute that her calendar is relevant to this issue. Instead, it
12 complains the request is "too granular." The Company now contends that seeking Ms. Lockwood's
13 calendar alone represents too small a sample size to be meaningful in such a large rate case and by
14 implication therefore suggests it would have been more appropriate for EFCA to have asked for
15 calendars of additional executives. The mere fact that EFCA could have asked for more does not
16 undermine its right to receive the relevant information it did request.

17 EFCA needs Ms. Lockwood's calendar before her deposition. Her calendar should be
18 disclosed pre-deposition so EFCA has the chance for follow-up questions (e.g., "How did this
19 meeting advance ratepayer interests as opposed to shareholders interests?"). The parties can later
20 discuss whether the Company should disclose additional calendars.

21 **Conclusion**

22 The key witness's calendar is relevant to scrutinize whether the Company properly
23 included any portion of her salary in the rate base. In fact, supporting its relevance is the fact that
24 the Company argued EFCA should request more calendars, in addition to Ms. Lockwood's. The
25 Company is welcome to disclose additional calendars; but EFCA properly focused its first calendar
26 request on Ms. Lockwood to prepare for her deposition.

Ms. Lockwood's calendar will also help EFCA question her about prior relevant statements. EFCA should have a chance to ask, with specificity, what she told other people about the issues now included in her testimony.

DATED this 5th day of December, 2016.



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**Original and 13 copies filed on
the 5th day of December, 2016 with:**

Docket Control
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I hereby certify that I have this day served a copy of the foregoing document on all parties of record in this proceeding by regular or electronic mail to:

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EXHIBIT 1

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY REGARDING
THE APPLICATION TO APPROVE RATE SCHEDULES DESIGNED TO
DEVELOP A JUST AND REASONABLE RATE OF RETURN
DOCKET NO. E-01345A-16-0036
AND
DOCKET NO. E-01345A-16-0123
OCTOBER 7, 2016

EFCA 4.2: Please provide a complete copy of Barbara Lockwood's calendar from May 2015 through the date of the response hereto.

Response: APS objects to this request as Ms. Lockwood's calendar is not relevant to the subject matters at issue in APS's pending rate case or reasonably calculated to lead to the discovery of admissible evidence.